

Editor's note: Reconsideration granted; decision set aside, hearing ordered by order dated Sept. 8, 1982 -- see 63 IBLA 164A and B below.

CALIFORNIA ENERGY CO.

IBLA 82-79

Decided April 6, 1982

Appeal from the decision of the California State Office, Bureau of Land Management, rejecting a high bid for a competitive geothermal resources lease. CA 11402.

Reversed.

1. Act of December 24, 1970--Geothermal Leases: Generally--Geothermal Leases: Competitive Leases--Geothermal Leases: Discretion to Lease

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

2. Geothermal Leases: Generally--Geothermal Leases: Competitive Leases

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

APPEARANCES: Kenneth Nemzer, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

California Energy Company has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated

October 2, 1981, rejecting its high bid for parcel 20 at the competitive geothermal resources lease sale held September 15, 1981. Appellant submitted a bid of \$133,321 or \$52.20 per acre for the 2,554.04-acre tract. BLM rejected the bid because it was lower than the appraised value established by the Geological Survey (Survey) in its presale evaluation of the parcel.

In its statement of reasons, appellant argues that its bid, determined by knowledgeable geologists familiar with the area, was a reasonable reflection of the market value of the parcel and that BLM's rejection of the bid was arbitrary and capricious. Appellant notes that BLM accepted bids for lesser amounts on other nearby parcels and that its bid was consistent in amount with the bidding on other parcels. Appellant urges that the bids received at the lease sale reflect fair market value for the parcel because "significant and sophisticated participants including Union Oil, Chevron and Occidental Petroleum were present and bidding." Appellant contends that BLM erred in relying on Survey's evaluation which applied an administrative formula rather than allowing the traditional forces of the marketplace to dictate the value of the parcel. Alternatively, appellant asserts that the methodology used by Survey has serious technical limitations and that Survey took insufficient account of the economic realities facing private industry in today's world. Appellant requests that a fact-finding hearing be held and that it be allowed to orally argue its case before the Board.

[1] Departmental regulations governing the award of a competitive geothermal resources lease specifically reserve the right to reject any and all bids submitted at a lease sale. 43 CFR 3220.6(c). In addition, the public sale notice announcing the September 15, 1981, lease sale stated:

Any bonus bid considered as inadequate on the basis of the estimated value of the lease will be rejected. The United States reserves the right to withdraw any parcel from this sale prior to the issuance of a written acceptance of a bid and reserves the right to reject any and all bids.

This Board has affirmed the authority of the Secretary of the Interior under the Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation 43 CFR 3220.6(c) to reject a high bid submitted for a particular parcel at a geothermal resources lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. Union Oil Co., 38 IBLA 373 (1978); Getty Oil Co., 27 IBLA 269 (1976).

The report of the Geothermal Lease Sale Evaluation Committee, dated September 14, 1981, presented its evaluation of 28 leasing units including the one at issue. The report included a narrative description of the Coso Hot Springs Known Geothermal Resource Area, a description of the volumetric evaluation methodology used by the committee, data on each leasing unit, and a partial list of reference materials. Data reported on parcel 20 included:

Leasing Unit 20

Geology: Horst of Mesozoic crystalline basement overlain by Quaternary rhyolite domes and pyroclastic deposits. Largest dome has reported age of 0.08 m.y.

Geophysics: Northeastern corner lies within area of convective heat flow anomaly.

Reservoir parameters:

	<u>Minimum</u>	<u>Maximum</u>	<u>Most Likely</u>	<u>Mean</u>	Arithmetic
Temperature (°C)	150	250	230	210	
Area (km ²)	1.5	5.5	3	3.33	
	(15 HFU)	(5 HFU)	(10 HFU)		
Thickness (km)	0.5	3	2	1.83	

Reservoir thermal energy: $3.17 \times 10^{18} \text{J}$

Comments: Unit has moderate probability of having a geothermal resource in the northeastern corner.

Data Quality: C [1/]

The committee summarized its findings as follows:

In the early stages of tract analysis, a review was completed on each of the twenty-eight tracts offered to compile the necessary geological, geochemical, geophysical and hydrological information. Those tracts in which the reservoir temperatures at moderate depths was considered insufficient for commercial generation of electrical power (less than 150 degrees C) were automatically put into the "nominal" category in terms of pre-sale value and were no longer considered. This was the case for 21 of the 28 tracts currently being offered.

For the other seven tracts which required a further detailed analysis, the volumetric evaluation methodology discussed in the USGS Circular 790 was utilized for the first time to estimate the electrical energy that could be produced from the available energy at the wellhead.

1/ Geothermal Reliability Category C is defined as follows:

"C. Geologic and geophysical information may contain data gaps, but is, in general, good. Production data requires much inference, cost data may be fairly reliable; nearest well control is a distance from tract as to be only vaguely applicable."

The conversion of the available electrical energy to presale resource values (in situ) was made through the utilization of the value determination formula utilized in the GUESS geothermal probabilistic analysis, Model C.

As can be seen in Table 3, [2/] the further detailed analysis resulted in three more tracts falling into the nominal category and four of the tracts (12, 13, 15 and 20) receiving positive presale resource values of between \$267.00 and \$1,147.00 per acre.

The possibility of determining comparable resource values on the basis of lease tracts in the nearby Mono-Long Valley KGRA was considered, but discarded due to variance in geologic structures between the KGRA's.

The committee determined that the minimum acceptable bid for parcel 20 was \$267 per acre.

Appellant criticizes the Survey evaluation for its failure to account for the subjectivity of the input variables and suggests that the methodology used is more valuable for comparative purposes than for generating a single absolute value as an expression of geothermal potential. Appellant contends that Survey had to estimate 12 independent variable parameters to calculate the minimum bid and that variation of any one of just three 3/ of the 12 parameters within realistic field limits would generate a minimum bid less than its bid. Appellant

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"TABLE 3
 COSO HOT SPRINGS KGRA, GEOTHERMAL
 "COMPETITIVE LEASE SALE
 "9/15/81
 "TRACT VALUES

"PV Risk = KW-HR * Mills / 1000 * (1 - XRisk)
 - (XRISK * XPLORE)
 "XPLORE = \$850,000 (estimated cost of exploration through the drilling of of [sic] one borehole)
 "MILLS = 1.0

Tract	KW-HR X 10 ⁹	Total Value	Pro-ductive Acres	oC	XRISK	PER ACRE WELLHEAD VALUE	TEMP	VALUE ROUNDED
11	2.243	\$ -386,050	2560.64	289	85	199	Nominal	
12	8.675	1,055,000	2430.95	927	80	214	\$434	
13	9.145	1,149,000	1839.32	1105	80	204.5	\$625	
14	3.348	-430,200	1920.00	741	90	172	Nominal	
15	18.051	2,930,200	2555.00	1824	80	214.5	\$1,147	
20	6.815	683,000	2554.04	822	80	204.5	\$267	
21	2.455	-519,500	1440.00	452	90	177	Nominal"	

3/ The three identified parameters are heat flow, reservoir thickness and exploration expenditure.

argues particularly that Survey's estimate of \$850,000 as the cost of exploration is underestimated as its actual costs for such exploration have been several times that amount. Appellant also asserts that the Survey evaluation took insufficient account of economic realities facing private industry in developing geothermal resources such as the interest costs for money and the fact that no revenues would be forthcoming until power generation facilities are built and transmission equipment is in place.

It has long been the Department's policy in the administration of its competitive leasing program to seek the return of fair market value for the grant of leases. Getty Oil Co., *supra* at 273. See Harry Ptasynski, 48 IBLA 246 (1980); Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974). We disagree with appellant's suggestion that the bidding activity at the lease sale is the appropriate measure of fair market value. The bids received on any parcel do not necessarily represent an accurate test of fair market value because the bidders may consider other factors, such as matters related to their individual businesses, in making their bids. In this case only two other bids were received on parcel 20: Occidental Petroleum, \$79,205, and Grant Lyddon, \$36,526.49. Though all are considerably less than the Survey minimum bid, they do not in any way reflect a consensus on a value for the parcel. Furthermore the fact that the other "significant and sophisticated participants" in the overall lease sale did not bid is of little import to the parcel at issue. While the lack of bids may on the one hand suggest that such bidders found parcel 20 to have little value, it could also reflect a determination by the companies to use finite financial resources on parcels more attractive to each company's particular plans. In addition, the fair market value of the other parcels presented at the lease sale has no bearing on the value for parcel 20. Each tract is evaluated individually and one may clearly be more valuable than another for a variety of reasons. We note in this case that although the majority of the parcels put up for sale were found by Survey to have only nominal value, for the other three parcels for which Survey calculated a specific minimum bid, the minimum bid was found to be greater than the per acre bid for parcel 20.

[2] The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluations and this Board has repeatedly held that the Secretary is entitled to rely on its reasoned analysis. William C. Welch, 60 IBLA 248 (1981); Ojai Oil Co., 49 IBLA 33 (1980); Harry Ptasynski, *supra*; Getty Oil Co., *supra*. Appellant has the burden of showing that the rejection of its bid as too low was arbitrary and capricious and that BLM had no rational basis for rejection of the bid. Union Oil Co., *supra*.

By order dated January 15, 1982, this Board directed appellant to submit data substantiating its charge that the actual cost of exploration through drilling of one borehole in the Coso Hot Springs Known Geothermal Resource Area was several times the \$850,000 figure used by Survey in its formula for computing a minimum acceptable bid for parcel 20. On February 16, 1982, appellant filed documents prepared by

the Department of Energy (DOE) summarizing the costs it incurred in 1977 for drilling and completing COSCO Geothermal Exploratory Hole No. 1. The total cost amounted to \$1,613,000. Appellant then adjusted certain elements of the DOE list to reflect costs increases for 1981-82 of which it was aware and projected a current exploration/drilling cost of \$2,918,000. Finally, appellant has exploration and support costs in the Coso area totalling \$1,279,300.

Appellant's figure of \$1,613,000 for costs associated only in the actual drilling of the COSCO well in 1977, when factored into Survey's formula result in a valuation of the subject tract at \$28.40 per acre. Using the cost adjustment figures which appellant contends results in a present figure of \$2,918,000, one arrives at a negative bonus value (or as Survey would prefer "nominal" value) for the tract in question. Neither Survey nor BLM has submitted comments on this data. We find that appellant has satisfactorily established that Survey's estimate of costs for exploration was too low and as a result its valuation of parcel 20 too high. Where the high bidder for a geothermal lease presents data showing that a fundamental assumption of Survey's evaluation of the parcel is incorrect and its bid is not spurious or unreasonable but rather is more likely to correctly reflect the actual value of the parcel, and where Survey fails to defend its evaluation, we will reverse a BLM decision rejecting the high bid and direct that the lease be issued to the high bidder, all else being regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is reversed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

September 8, 1982

IBLA 82-79	:	CA 1140
	:	
CALIFORNIA ENERGY COMPANY	:	63 IBLA 159 (1982)
	:	
	:	Geothermal Resources Lease
	:	
	:	Petition for Reconsideration
	:	granted- hearing ordered

ORDER

By decision California Energy Company, 63 IBLA 159 (1982), this Board reversed the rejection of the high bid for a geothermal resources lease on Parcel 20, offered at a competitive sale September 15, 1981, CA 11402. Although aware of the appeal and served with all statements from appellant, the Office of the Solicitor made no appearance, offering neither a defense of the recommendation of the Geological Survey (now Minerals Management Service), nor a rebuttal to the arguments of appellant.

On May 3, 1982, the Board received a notice of appearance and a petition for reconsideration of the decision from an attorney in the Office of the Field Solicitor, Riverside, California. The petition stated that because of confusion in the Office of the Regional Solicitor over assignment of cases, the data relating to the appeal of California Energy Co. was not timely transmitted to the Riverside Office, and so no appearance was made or answer submitted.

The governing regulation, 43 CFR 4.21(c), states that decision of the Board are final for the Department and reconsideration of decisions may be granted only in extraordinary circumstances where sufficient reasons are therefor.

While nothing adduced by the Government's attorney convinces us that an extraordinary circumstance existed to preclude his earlier and timely appearance, we do note that appellant failed to serve a copy of its supplemental data on the State Office as directed by the Board in its Order of January 15, 1982, and this may have contributed to the failure of the Solicitor's Office to file a timely response. In any event, the allegations set out in the affidavits of two employees of Minerals Management Service raise substantial questions as to the actual cost of drilling a geothermal well. In our opinion, the questions can

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best be resolved at a hearing before an Administrative Law Judge where each party may present evidence and testimony, as well as cross examine the opposing witnesses.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision California Energy Co., 63 IBLA 159 (1982), is set aside and the matter referred to the Hearings Division for assignment to an Administrative Law Judge, who will prepare a recommended decision and serve it on the opposing parties, allowing each the opportunity to submit briefs to the Board thereafter.

Douglas E. Henriques
Administrative Judge

We Concur:

James L. Burski Anne Poindexter Lewis
Administrative Judge

Administrative Judge

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